

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY SCHLOSSER and U.S. POSTAL SERVICE,
POST OFFICE, Billings, MT

*Docket No. 99-895; Submitted on the Record;
Issued October 23, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained an employment-related temporary aggravation of depression that ceased by March 11, 1997.

On April 15, 1997 appellant, then a 62-year-old welder, filed a claim for anxiety and depression that he attributed to favoritism by supervisors toward younger employees. On April 3, 1998 appellant filed a claim for a traumatic injury sustained on February 11, 1997 when a coworker started an argument with him. Appellant stated that this incident caused his blood pressure to go up and caused an event of ischemic optic neuropathy of his left eye. Appellant stopped work on February 11, 1997.

By letter dated October 23, 1997, the Office of Workers' Compensation Programs advised appellant that it had accepted that he sustained a temporary aggravation of depression that ceased by March 11, 1997. Appellant declined to buy back the leave he used from February 11 to March 11, 1997. Appellant requested reconsideration of the Office's acceptance of temporary aggravation of depression and submitted additional evidence. After further development of the evidence, the Office, by decision dated November 19, 1998, found that the additional evidence was not sufficient to warrant modification of its prior decision.

The Board finds that the case is not in posture for a decision due to a conflict of medical opinion.

In a report dated October 1, 1997, Dr. Laura Klein, a Board-certified psychiatrist, to whom the Office referred appellant for a second opinion evaluation, reviewed appellant's history and set forth findings on mental status examination and psychological testing. Dr. Klein stated:

“[Appellant] carries the diagnosis of major depressive disorder, severe with psychotic features, partially treated, DSM IV, Code 296.24. [He] presents with depressed mood and loss of interest in nearly all activities, increased irritability, social withdrawal and according to the psychological testing, an increased sense of worthlessness and guilt and negative evaluations of his own worth. In

addition, he has a significantly impaired ability to concentrate. He also has a firm belief that people are either making fun of him or 'out to get him.' Although there appears to be some basis in reality to his concerns about his treatment at the postal service, some thoughts are clearly of a paranoid nature. For example, [appellant] felt that his previous fitness-for-duty evaluation was intentionally scheduled on the date of his granddaughter's high school graduation in a deliberate attempt to keep him from attending this. However, several documents that [appellant] brought with him written by fellow former employees, substantiated that the supervisor was, in fact, trying to ease out older employees in his particular work situation. Since the latter factor is not identified as a compensable work factor, it will not be considered in whether this emotional condition has been caused or exacerbated by this event.

"In addition to the diagnosis of major depressive disorder, there also exists the diagnosis of relational problems not otherwise specified, DSM IV Code V 62.81, This disorder pertains to the dysfunctional mode of interaction between workers at the U.S. Postal Service. In particular, [appellant's] supervisor yelling at him in front of employees¹ is inappropriate behavior and certainly would temporarily exacerbate some symptoms of major depression, particularly in light of [appellant's] decreased feelings of self worth. The relational problems pertain to dysfunctional patterns of interaction among members of a relational unit, in this case the postal service. These are associated with clinically significant impairment in functioning one or more members of the relational unit, or impairment in the functioning of the relation unit itself. It appears that the latter dynamic is more important in this case and, as such, this is a systems problem and not a disorder of an individual, *per se*. One would expect that such dysfunctional patterns of relating might temporarily worsen some depressive symptoms, however, this would be limited to a time period of days. If there were additional factors accepted as compensable which indicated a more chronic nature of this inappropriate behavior, then the exacerbation might be determined at some future date to be more longstanding. Removal of [appellant] from the work environment should be sufficient in alleviating that exacerbation."

With her October 1, 1997 report, Dr. Klein submitted a work tolerance limitations form dated March 16, 1997, indicating that appellant reached maximum medical improvement for his work-related exacerbation on March 1, 1997. In response to an Office request for a supplemental report, addressing an additional compensable factor of appellant's supervisor adjusting the temperature of appellant's welding machine in 1994 causing the electrode to explode, Dr. Klein stated in a November 10, 1998 report:

"This event, although likely to be frustrating or startling, would be highly unlikely to precipitate or exacerbate symptoms of major depressive disorder. The fact that this was an accidental occurrence and not one done intentionally, strengthens this opinion. It is more likely that this event felt magnified to the claimant because of

¹ The statement of the accepted facts provided to Dr. Klein by the Office stated that a factor accepted as factual and compensable was appellant's supervisor yelling at him in front of other employees in December 1995.

his existing depression. However, it is highly improbable that an event such as this could have any enduring psychological impact, other than a fear that future electrodes might explode. This event falls within the range of normal everyday experiences. Therefore, the medical opinion given in my earlier report remains unchanged.”

The opinion of Dr. Klein, the Office’s referral physician, is in conflict with the opinion of appellant’s attending physician, Dr. Eeva Echeverri, a Board-certified psychiatrist. In a report dated May 19, 1998, he reviewed appellant’s prior medical reports and history, including “an incident on the job on February 11, 1997, with a confrontational coworker that led to appellant leaving his job because he was too stressed to continue working. He became very upset when he brought the confrontational situation to the attention of one of his supervisors and the supervisor treated him like a little boy when he told him to go back to his welding room, sit down and shut up. The supervisor did nothing to address the problem.” Dr. Echeverri stated:

“I have also read the nine-page report by Dr. Laura Klein, who was asked by the U.S. Department of Labor to evaluate [appellant]. I certainly disagree with her conclusions that [appellant’s] supervisor yelling at him in front of employees would only temporarily exacerbated some symptoms of major depression, or that the depressive symptoms would be limited to a time period of days. [Appellant] is a 62-year-old gentleman, who has been a postal employee for over 24 years and has been a well-decorated employee during that time. His coworkers look up to him and highly respect [him]. They come to him with their problems because they trust him. To have been humiliated in front of coworkers who hold [appellant] in such high esteem has had a great emotional impact on him. I have treated [appellant] since November 4, 1997 because of all these incidents and nine months later he is still experiencing major depression and symptoms of post-traumatic stress as a result of those events. ... I disagree with Dr. Klein’s conclusion that [appellant’s] exacerbation of depression ceased on [March] 11, [19]97.”

* * *

“The specific job incidents as related to me by [appellant] and affidavits from [his] coworkers and family members, were such that they produced a high degree of anxiety and anger in [appellant]. Even though these incidents occurred months before [appellant’s] first visit with me, the anxiety, anger and depression were still evident when he came to me on [November] 4, [19]97. From his first visit until now, [appellant] is preoccupied with the negative job-related experiences that apparently led up to the incidents in January and February 1997. [Appellant] tries to avoid the post office and anything related to it. He has irritability, lack of concentration, trouble sleeping, as well as dreams and recollections of the event. In addition he has suicidal ideation. When his supervisor yelled at him and humiliated him in front of his peers, while he was doing his job and then another supervisor refused to handle a situation with a coworker which was clearly causing him anxiety and stress. The humiliation and embarrassment from his supervisors’ treatment of him is still very vivid in [appellant’s] mind. It is reasonable that [appellant’s] hypertension on February 11, 1997 was exacerbated

by these events and the events contributed to his condition of anxiety and depression.”

The reports of Drs. Klein and Echeverri are in conflict on the question of whether the employment-related effect on appellant’s major depression ended by March 11, 1997. The physicians disagreed on the duration of the effect of appellant’s supervisor yelling at him, which the Office accepted as a compensable factor of employment. To resolve the conflict of medical opinion, the Office should, pursuant to section 8123(a) of the Federal Employees’ Compensation Act,² refer appellant, the case record and a statement of accepted facts to a Board-certified psychiatrist for a reasoned medical opinion whether appellant’s employment-related depression ended by March 11, 1997.

The decision of the Office of Workers’ Compensation Programs dated November 19, 1998 is set aside and the case remanded to the Office for action consistent with this decision of the Board, to be followed by an appropriate decision.³

Dated, Washington, DC
October 23, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

² 5 U.S.C. § 8123(a) states in pertinent part “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”

³ The Board notes that the case record does not contain a final decision on appellant’s claim for an ischemic optic neuropathy. As the Board’s jurisdiction is limited to review of final decisions of the Office, the Board cannot address this issue on appeal.